Supreme Court, U. S.
FILED
JUL 17 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 1979

No. 79-1527

THE STATES OF ALASKA, ARKANSAS, CALIFORNIA, COLORADO, IOWA, MISSOURI, NEBRASKA, NEW MEXICO, OREGON AND WASHINGTON (Plaintiffs in the Fine Paper Antitrust Litigation, MDL Docket No. 323),

Petitioners,

v.

THE HONORABLE JOSEPH L. McGLYNN, JR., Judge, United States District Court for the Eastern District of Pennsylvania,

Respondent.

REPLY BRIEF OF PETITIONERS

JAMES KIRKHAM JOHNS
Chief Counsel
Antitrust Division
235 Union Street N.E.
Salem, Oregon 97305
Counsel for Petitioner
State of Oregon
On Behalf of
Petitioning States

Attorneys appearing Of Counsel appear on signature page of reply.

INDEX

Introduction 1

Petitioners Produced Documents Which Contained the Information Elicited by the Interrogatories 2

Petitioners Adequately Specified the Documents From Which the Requested Information Could Have Been Derived or Ascertained 5

The Burden of Extracting the Information From the Documents Produced Would be no Greater For Respondents Than for Petitioners . . 10

Mandamus is Both Appropriate and Necessary in Order to Preserve the Procedural Safeguards Provided by Rule 33(c) of the Federal Rules of Civil Procedure 12

Conclusion 13

Reply Appendix 1 (Plaintiff State of Alaska's Answers and Objections to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 1

Reply Appendix 2 (Plaintiff State of Arkansa's Answers and Objections to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 9

Reply Appendix 3 (Plaintiff State of California's Answers and Objections to Defendants' Joint Interrogatories and Requests for Production of Documents (Set II) . . . . . RA 16

Reply Appendix 4 (Plaintiff State of Colorado's Responses and Objections to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 20

Reply Appendix 5 (Plaintiff's [Iowa] Responses and Objections to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 25

Reply Appendix 6 (Plaintiff State of Missouri's Responses to Defendants' Joint Interrogatories and Request For Production of Documents (Set II) . . . . . RA 32

Reply Appendix 7 (Plaintiff State of Nebraska's Responses to Settling Defendants's Joint Interrogatories and Request for Production of Documents (Set II) RA 36

Reply Appendix 8 (Plaintiff State of New Mexico's Response to Defendants Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 43

Reply Appendix 9 (Plaintiff State of Washington's Responses to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 46

Reply Appendix 10 (Certain States Supplemental Response to Defendants' Joint Interrogatories and Request for Production of Documents (Set II) . . . . . RA 50

Reply Appendix 11 (Defendants' Joint First Wave Interrogatories (Set I) . . . . . RA 53

Reply Appendix 12 (Plaintiff State of Oregon's Answers and Objections to Defendants' Joint First Wave Interrogatories (Set I). . . . . RA 58

TABLE OF AUTHORITIES

Cases

Campbell v. Von Hoffman Press, Inc., 24 F.R. Ser. 2d. 413 (W.D. Mo. 1977) 11

Daiflon v. Allied Chemical Corp., 534 F.2d 221 (10th Cir. 1976). 4

G.O. Coin Service, Inc. v. Ace Welding Co., 26 F.R. Ser. 2d. 601 (S.D. Ohio 1978). 11

In re Master-Key Antitrust Litigation, 53 F.R.D. 87 (D. Conn. 1971) 9

LaBuy v. Howes Leather Co. 352 U.S. 249 (1957) 12

REPLY BRIEF OF PETITIONERS

I.

INTRODUCTION

Respondents would have this Court believe that Petitioners have led Them on the proverbial "wild goose chase" with their Rule 33(c) responses to Respondents' "forms" interrogatories by referring to a meaningless "mass" of documents which might, or might not, contain the information elicited. With appalling indifference, however, Respondents ignore the simple fact that Petitioners produced selected transactional documents which did, in fact, contain the information requested by the interrogatories.

II.

PETITIONERS PRODUCED DOCUMENTS WHICH CONTAINED THE INFORMATION ELICITED BY THE INTERROGATORIES

Respondents suggest that by virtue of volume alone, Petitioners' Rule 33(c) productions were inadequate. The most notable feature of their brief, however, is the abscence of any reference to specific inadequacies of any particular Petitioners'production.

As revealed in Petitioners' respective responses to the "forms" interrogatories,[1/] the very documents which contained the information elicited

---

1/ Pertinent portions of the responses of each Petitioner except Oregon to Respondents' "forms" interrogatories are attached as Reply Appendices 1 through 10, pages RA 1 through RA 52. Oregon's responses are attached to Petitioners' opening brief as Appendix 7, page A 22.

by the interrogatories had been produced and made available to Respondents for inspection and copying, in response to earlier discovery requests, nearly a year and a half prior to the time Respondents propounded their "forms" interrogatories. Indeed, as revealed by Oregon's answers to the interrogatories,[2/] and by the affidavit filed by Oregon in support of Petitioners' motion for reconsideration of the order compelling the States to complete the forms,[3/] documents were microfilmed at the Respondents' request

---

2/ Attached as Appendix 7 to Petitioners' opening brief, page A 22, at page A 23.

3/ Attached as Appendix 10 to Petitioners' opening brief, page A 29, at page A 37.

in August of 1978. At no time, however, have Respondents specified why Petitioners' production of documents was inadequate, or in what way the documents did not contain the information requested. It is their burden to do so. Daiflon v. Allied Chemical Corp., 534 F.2d 221, 227 (10th Cir. 1976).

The approximately 16,000 documents produced by Oregon,[4/] for example, can hardly be considered a meaningless "mass of documents." The mere fact that such documents are voluminuous is beside the point. Respondents requested certain information, and Petitioners, in complete harmony with the underlying spirit and

---

4/ See Appendix 10 attached to Petitioners' opening brief, page A 29, at pages A 31 through A 32.

purpose of Rule 33(c), produced documents from which the requested information could have been derived or ascertained.

III.

PETITIONERS ADEQUATELY SPECIFIED THE DOCUMENTS FROM WHICH THE REQUESTED INFORMATION COULD HAVE BEEN DERIVED OR ASCERTAINED

Respondents' statement that Petitioners' attempted to "circumvent" the requirements of Rule 33(c) "by vague references to a mass of documents without specifing which of those documents within the mass actually contained the information sought"[5/] is an outrageous distortion of the record. A year before Respondents propounded their "forms" interrogatories, transactional documents

---

5/ Respondents' Brief, page 3.

were identified by Petitioners and produced to Respondents in response to earlier discovery requests. In conjunction with such earlier productions, Respondents deposed employees of Petitioners who were responsible for Petitioners' purchases of fine paper.[6/] Further, when Petitioners offered the transactional documents for a second time in their responses to the "forms" interrogatories, the representation that Petitioners would produce documents from which the requested information could in

---

6/ See the respective Petitioners' responses to the "forms" interrogatories, attached as Reply Appendicies 1 through 10, pages RA 1 to RA 52, and attached to Petitioners' opening brief as Appendix 7, page A 22.

fact be derived or ascertained was explicit.[7/]

In addition to identifying and producing documents and making purchasing personnel available for depositions, certain Petitioners set forth detailed descriptions of responsive documents in their responses to the "forms" interrogatories[8/] and to Respondents' earlier disco-

---

7/ Reply Appendicies 1 through 10, pages RA 1 through RA 52, and Appendix 7, page A 22, attached to Petitioners' opening brief.

8/ Reply Appendicies 1 and 3, pages RA 1 and RA 16, respectively, and Appendix 7 attached to Petitioners opening brief, page A 22.

very requests.[9] In light of the aforementioned productions, depositions and identification of documents, Respondents' contention that Petitioners attempted to circumvent Rule 33(c) by "vague" references to documents is utter nonsense. It is more than apparent that Petitioners met the requirement of Rule 33(c) that they "specify the records from which the

---

[9] Appendix 7 attached to Petitioners' opening brief, page A 22. The implication of footnote 1 at page 3 of Respondents' Brief is that Oregon did not specifically identify the records and files from which the requested information could be derived or ascertained in its responses to Respondents' earlier discovery requests. The pertinent portions of the earlier requests in response to which the records and files were identified are attached as Reply Appendix 11 at page RA 53. The pertinent portions of Oregon's responses to such discovery requests, including the identification of such records and files, are set forth as Reply Appendix 12 at Page RA 58.

answer may be derived or ascertained."

Contrary to Respondents' characterization of the case as involving "a comparable situation," In re Master-Key Antitrust Litigation, 53 F.R.D. 87, 90 (D. Conn. 1971), is completely inapposite. Master-Key dealt with answers to interrogatories which left the interrogoting party to speculate as to whether or not the requested information was in fact contained within the files referred to in the answers to interrogatories. In the instant case, Petioners specified -through actual productions, depositions and narrative descriptions - the files and records from which the elicited information could have been derived or ascertained. The record is barren of any instance in which this was not the case.

IV.

THE BURDEN OF EXTRACTING THE INFORMATION FROM THE DOCUMENTS PRODUCED WOULD BE NO GREATER FOR RESPONDENTS THAN FOR PETITIONERS

Respondents erroneously assert (Respondents Brief, page 4) that in order to extract the information elicited by the "forms" interrogatories themselves, it would be necessary for them to know certain terms and conditions involved in Petitioners' purchases of fine paper. Respondents, however, miss the point. It is precisely this type of information which is included in the transactional documents produced to them nearly two years ago! And although Respondents maintain that Petitioners' employees "clearly" know more about purchasing requirements and practices than do the Respondents themselves, Respondents have

made no evidentiary showing to establish this fact or to counter the affidavits[10/] which accompanied Petitioners' motion for reconsideration of the order requiring them to extract the information from the documents and complete the forms. Respondents have had ample opportunity to do so, and they cannot meet their burden of controverting Petitioners' sworn statements by bold assertions at this time in their brief to this Court. See, G.O. Coin Service, Inc. v. Ace Vending Co., 26 F.R.Ser.2d 601 (S.D. Ohio 1978) and Campbell v. Von Hoffman Press, Inc., 24 F. R. Ser. 2d 413 (W.D. Mo. 1977).

10/ Attached to Petitioners opening brief as Appendicies 11 through 19, pages A 98 through A 137.

V.

MANDAMUS IS BOTH APPROPRIATE AND NECESSARY IN ORDER TO PRESERVE THE PROCEDURAL SAFEGUARDS PROVIDED BY RULE 33(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Despite Respondents' efforts to characterize the two orders from which Petitioners seek relief as a "discovery order" (Respondents' Brief, page 5) pertaining to a "routine question regarding the application of Rule 33(c)" (Respondents' Brief, page 1), the fact remains that the orders which are the subject of this proceeding entirely emasculate Rule 33(c) and effectively delete the rule, and the procedural safeguards it affords, from the Federal Rules of Civil Procedure. As noted in LaBuy v. Howes Leather Co., 352 U.S. 249 (1957), when the rules which by law it is the duty of this Court to formulate and

put in force have been effectively nullified by a district judge, mandamus should issue.

VI.

CONCLUSION

Petitioners respectively submit that a writ of mandamus should be issued.

Dated: July 14, 1980.

RESPECTFULLY SUBMITTED,

JAMES M. BROWN
Attorney General

/s/ James Kirkham Johns
JAMES KIRKHAM JOHNS
Chief Counsel
Antitrust Division
Department of Justice
235 Union Street N.E.
Salem, Oregon 97310
Telephone: (503) 378-4732

Counsel for Petitioner
State of Oregon
On Behalf of Petitioning
States

MARK ASHBURN, ESQ.
LOUISE MA, ESQ.
Office of the Attorney General
420 "L" Street, Suite 100
Anchorage, Alaska 99701
Telephone: (907) 276-3550

Counsel for Plaintiff
State of Alaska

FREDERICK K. CAMPBELL, ESQ.
Antitrust Division
Office of the Attorney General
122 National Old Line Building
Little Rock, Arkansas 72201
Telephone: (501) 371-1902

Counsel for Plaintiff
State of Arkansas

PATRICIA A. CUTLER, ESQ.
Department of Justice
6000 State Office Building
350 McAllister Street
San Francisco, California 94102
Telephone: (415) 557-3651

Counsel for Plaintiff
State of California

B. LAWRENCE THEIS, ESQ.
MARY G. ALLEN, ESQ.
Office of the Attorney General
Department of Law
1525 Sherman Street, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 839-3611

Counsel for Plaintiff
State of Colorado

JOHN R. PERKINS, ESQ.
WILLIAM F. RAISCH, ESQ.
Antitrust Division
Department of Justice
Second Floor
Hoover State Office Building
Des Moines, Iowa 50309
Telephone: (515) 281-3110

Counsel for Plaintiff
State of Iowa

WALTER O. THEISS, ESQ.
Office of the Attorney General
Supreme Court Building
P. O. Box 899
Jefferson City, Missouri 65101
Telephone: (314) 751-2632

Counsel for Plaintiff
State of Missouri

ROBERT F. BARTLE, ESQ.
DALE A. COMER, ESQ.
Department of Justice
2115 State Capitol
Lincoln, Nebraska 68509
Telephone: (402) 471-2682

Counsel for Plaintiff
State of Nebraska

JAMES WECHSLER, ESQ.
Office of the Attorney General
P. O. Drawer 1508
Santa Fe, New Mexico 87501
Telephone: (505) 827-5521

Counsel for Plaintiff
State of New Mexico

THOMAS L. BOEDER, ESQ.
JOHN R. ELLIS, ESQ.
DAVID F. ROSS, ESQ.
Office of the Attorney General
Dexter Horton Building
Seattle, Washington 98104
Telephone: (206) 464-7744

Counsel for Plaintiff
State of Washington

CERTIFICATE OF SERVICE

I, JAMES KIRKHAM JOHNS, of counsel for Petitioner State of Oregon, hereby certify that on July 17, 1980 true and correct copies of the foregoing Reply Brief of Petitioners were served upon all parties required to be served by mailing such copies to counsel for all parties to the Fine Paper Antitrust Litigation, upon the Honorable Joseph L. McGlynn, Jr., Judge, United States District Court for the Eastern District of Pennsylvania, and upon the Solicitor General, Department of Justice, by first class mail, postage fully prepaid thereon.

DATED: July 17, 1980

JAMES KIRKHAM JOHNS

REPLY APPENDIX 1

PLAINTIFF STATE OF ALASKA'S ANSWERS AND OBJECTIONS TO DEFENDANTS' JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

III.

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to the instructions regarding the completion of forms * * * on the grounds that said forms: * * * (6) call for information which can be derived or ascertained from plaintiffs' documents as easily by defendants as by plaintiff; and (7) seek information which has previously been provided or made available to defendants.

IV.

RESPONSES TO INTERROGATORIES

* * *

ANSWER NO. 12:

* * *

Plaintiff further objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in Plaintiff's responses to Defendants' Joint First Wave Interrogatories (Set I, answer Nos. 2 and 5).

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit

and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

With regard to purchase transactions elicited by the state, all such purchases are administered in accordance with the uniform purchasing provisions of AS 37.05.230. In connection with each such purchase, the purchasing divisions of the above-referenced agencies and institutions maintain the following documents in their files and records: invitations to bid (containing specifications and bid forms), bids (returned invitations to bid filled in by vendor), bid abstracts (summary of all bids on specific contract), contract awards (document reflecting award to vendor), bid list (list of all qualified vendors for particular commodity), advice of change in

purchasing document (incorporates all changes in terms or duration of contract), purchase requests (used to procure supplies in instances in which an agency has not been authorized to purchase directly), purchase orders (issued by GSS on purchase exceeding $1,000.00), delivery order (form used by agencies in making purchases from the contract awards or on the open market for purchases between $500.00 and $1,000.00), field warrants (used to obtain supplies by agency on contract or as documentation for off-contract purchase), and various correspondence and memos with regard to purchase transactions. * * *

ANSWER NO. 13:

* * *

The burden of deriving or ascertaining the information requested by this

interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such d ocuments and to make copies, compilations, abstracts or summaries thereof.

Plaintiff further objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in plaintiff State of Alaska's responses to Defendants' Joint First Wave Interrogatories (Set I) and in plaintiff

State of Alaska's response to Defendants' Joint first Wave Production of Documents (Set I). * * *

ANSWER NO. 14:

* * *

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

Plaintiff further objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in plaintiff State of Alaska's responses to Defendants' Joint First Wave Interrogatories (set I) and in plaintiff State of Alaska's response to Defendants' Joint First Wave Production of Documents (Set I).

ANSWER NO. 15:

* * *

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the

requested information can be drived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

Plaintiff further objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in plaintiff State of Alaska's responses to Defendants' Joint First Wave Interrogatories (Set I) and in plaintiff State of Alaska's response to Defendants' Joint First Wave Production of Documents (Set I).

REPLY APPENDIX 2

PLAINTIFF STATE OF ARKANSAS ANSWERS AND OBJECTIONS TO DEFENDANTS' JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

II

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects generally to the instructions regarding the completion of Forms 1 through 6 on the grounds that such forms: * * *

(6) call for information which can be derived or ascertained from Plaintiff's document as easily by Defendants as by Plaintiff, which documents have previously been produced to and filmed on behalf of Defendants; and (7) seek information which has previously been provided or made available to Defendants.

III

INTERROGATORIES

INTERROGATORY NO. 1:

* * *

OBJECTIONS TO INTERROGATORY NO. 1

* * *

This interrogatory is further objectionable because it asks for information which has previously been provided or made available to Defendants in Plaintiff State of Arkansas' Responses to Defendants' Joint First Wave Interrogatories, Answers to Supplemental Class Action Interrogatories filed by Defendants Potlatch Corporation and Boise Cascade Corporation, State of Arkansas' Response to Defendants' Joint First Wave Production of Documents and as a result of the deposition of Edourd L. Lassieur, purchasing agent for the State of

Arkansa, whose deposition was taken on September 15, 1978.

* * *

OBJECTIONS/ANSWER TO INTERROGATORY NO. 12:

* * *

(6) it elicits information which has previously been provided by this Plaintiff in reponse to Defendants' discovery as described in Plaintiff's objection to Interrogatory No. 1.

Without waiving the foregoing objection, Plaintiff answers as follows: The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for Defendants as for Plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce at a mutually agreeable time and place, documents from which the

requested information can be derived or ascertained and will afford Defendants reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

* * *

OBJECTIONS/ANSWER TO INTERROGATORY NO. 13:

Plaintiff objects to Interrogatory No. 13 on the grounds that: * * *

(6) it elicits information which has previously been provided by this Plaintiff in response to Defendants' discovery as described in Plaintiff's objection to Interrogatory No. 1.

Without waiving the foregoing objection, Plaintiff answers as follows: The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the

same for Defendants as for Plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce at a mutually agreeable time and place, documents from which the requested information can be derived or ascertained and will afford Defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts of summaries thereof.

* * *

OBJECTIONS/ANSWER TO INTERROGATORY NO. 14

Plaintiff objects to Interrogatory No. 14 on the grounds that: * * *

(6) it elicits information which has previously been provided by this Plaintiff in response to Defendants' discovery as described in Plaintiff's objection to Interrogatory No. 1.

Without waiving the foregoing objection, Plaintiff answers as follows: the burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for Defendants as for Plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce at a mutually agreeable time and place, documents from which the requested information can be derived or ascertained and will afford Defendants a resonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts of [sic] summaries thereof.

[sic] INTERROGATORY NO. 15:

Plaintiff objects to Interrogatory No. 15 on the grounds that: * * *

(6) it elicits information which was previously been provided by this Plaintiff in response to Defendants' discovery as described in Plaintiff's objection to Interrogatory No. 1.

Without waiving the foregoing objection, Plaintiff answers as follows: The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for Defendants as for Plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce as a mutually agreeable time and place, documents from which the requested information can be derived or ascertained and will afford Defendants a reasonable opportunity to examine, audit and inspect such documents to make copies, compilations, and abstracts of summaries thereof.

REPLY APPENDIX 3

PLAINTIFF STATE OF CALIFORNIA'S ANSWERS AND OBJECTIONS TO DEFENDANTS' JOINT INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to the instructions regarding the completion of forms 1 through 6 on the grounds that said forms:

* * *

(6) call for information which can be derived or ascertained from plaintiffs' documents as easily by defendants as by plaintiff; (7) seek information which has previously been provided or made available to defendants.

ANSWER/OBJECTION TO INTERROGATORY NO. 12:

* * *

Plaintiff objects to this interrogatory on the grounds that the information

sought has previously been provided or made available to defendants in response to Defendants' Joint First Wave Request for Production of Documents (Set I).

During the month of September, 1978, attorneys for defendant Potlatch, acting on behalf of all mill defendants, inspected and copied over 10,000 purchase documents produced by the State of California in Sacramento, California. among those documents produced, inspected and copied were: annual and period contracts, purchase orders, acceptable products lists, qualified vendor lists, systems management and organizational descriptions, laws and regulations governing state contracting and purchasing.

In addition various of the aforementioned documents were the subject of

testimony in and appended as exhibits to the depositions of the following California purchasing personnel: Harley C. Raymond, taken September 1, 1978; John S. Babich, taken September 5, 1978; and Robert R. Brownlee, taken September 12, 1978.

ANSWER/OBJECTION TO INTERROGATORY NO. 13:

See above response to Interrogatory No. 12.

Plaintiff further responds that this information was provided in Plaintiff State of California's Answers and Objections to Defendants' Joint First Wave Interrogatories (Set I), dated August 11, 1978.

ANSWER/OBJECTION TO INTERROGATORY NO. 14:

See above response to Interrogatory No. 12.

ANSWER/OBJECTION TO INTERROGATORY NO. 15:

See above response to Interrogatory No. 12.

REPLY APPENDIX 4

PLAINTIFF STATE OF COLORADO'S RESPONSES AND OBJECTIONS TO DEFENDANTS' JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II).

* * *

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to the instructions regarding the completion of forms * * * on the grounds that said froms: * * * (6) call for information which can be derived or ascertained from plaintiff's documents as easily by defendants as by plaintiff; (7) seek information which has previously been provided or made available to defendants.

With respect to information previously provided, plaintiff states that, in response to "Defendants' Joint First Wave Request for Production of Documents (Set I)" it produced to defendants for inspection and copying a substantial

number of purchase documents from 25 to 30 different state agencies located throughout the state. Because of the time pressure and volume of documents, plaintiff initially offered to make available to defendants for inspection all purchase documents at their respective agency locations. Defendants rejected this offer and demanded production at a central location. In the interest of comity, plaintiff thereafter assembled at a central location as many of the documents as possible given the time constraints. In some instances the number of years covered or the type of document varied from agency to agency. Nonetheless, a substantial number of the purchase documents were produced.

INTERROGATORY NO. 12:

* * *

(A): * * *

Plaintiff further objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in plaintiff's "Responses to Defendants' Joint First Wave Interrogatories (Set I)," "Supplemental Responses of Plaintiff State of Colorado to Defendants' Joint First Wave Interrogatories (Set I), " as a result of plaintiff having produced for defendants, in response to discovery requests, documents from which the requested information could have been derived or ascertained, and as a result of

the deposition of Barbara H. Cox, purchasing agent for the State of Colorado, which deposition was taken on September 22, 1978.

To the extent that plaintiff's production of documents referred to above did not include all documents from the time period, the burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mtually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to

examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

INTERROGATORY NO. 13:

* * *

(A):

See response to interrogatory No. 12.

INTERROGATORY NO. 14:

* * *

(A):

See respone to interrogatory No. 12.

INTERROGATORY NO. 15:

* * *

(A):

See response to interrogatory No. 12

REPLY APPENDIX 5

PLAINTIFF'S [IOWA] RESPONSES AND OBJECTIONS TO DEFENDANTS'[1] JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to the instructions regarding the completion of forms * * * on the grounds that said forms: * * * (6) call for information which can be derived or ascertained from plaintiffs' documents as easily by defendants as by

---

1/ International Paper Company, Boise Cascade Corporation, Potlatch Corporation, St. Regis Paper Company, Union Camp Corporation, Weyerhaeuser Company.

plaintiff: (7) seek information which has previously been provided or made available to defendants.

II.

INTERROGATORIES

* * *

RESPONSES AND OBJECTIONS TO INTERROGATORY NO. 12:

* * *

The burden of driving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Purusuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit

and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

Plaintiff objects to this interrogatory on the grounds that the following information sought on Form #1 has previously been provided or made available to defendants as follows:

Form #1

Parts 1 and 2: Plaintiff's response and supplemental response to Interrogatory No. 2 of Defendants' Joint First Wave Interrogatories (Set I).

Parts 9, 10, 11 and 13: Documents on state bidding procedures produced in response to the depositions of state purchasing agents Leonard Olsasky and Dennis Groe taken on September 21, 1978 and set to Robert

Ferri, Attorney for Defendant Union Carbide, Breed, Abbott and Morgan, 1 Chase Manhatten Plaza, New York, New York 10003 on October 3, 1978.

RESPONSES AND OBJECTIONS TO INTERROGATORY NO. 13:

* * *

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

Plaintiff objects to this interrogatory on the grounds that the following information sought on Form #2 has previously been provided or made available to defendants as follows:

FORM #2

Part 23: Plaintiff's Response, Further Response and Supplemental Response to Interrogatories No. 4(a) of Defendant's Joint first Wave Interrogatories (Set I).

RESPONSES AND OBJECTIONS TO INTERROGATORY NO. 14:

* * *

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will

therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

RESPONSES AND OBJECTIONS TO INTERROGATORY NO. 15:

* * *

The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a

reasonable opportunity to examine, audit and inspect such documents and to make copies, complilations, abstracts or summaries thereof.

Plaintiff objects to this interrogatory on the grounds that the information sought has previously been provided or made available to defendants in response to Defendants' Joint First Wave Production of Documents (Set I).

APPENDIX 6

PLAINTIFF STATE OF MISSOURI'S RESPONSES TO DEFENDANTS' JOINT INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

GENERAL OBJECTIONS

* * *

6. Plaintiff objects to these discovery requests to the extent that they seek information previously provided by Missouri in this litigation, including information provided in: (a) Missouri's responses to Defendants' Joint First Wave Interrogatories (Set I), or to the Supplemental Class Action Interrogatories served by defendants Potlatch and Boise Cascade; (b) defendants' deposition of Gary Judd, of the Department of Administration, division of Purchasing, taken August 31, 1978; (c) Missouri's

Responses to Defendants' Joint First Wave Production of Documents (Set I); and/or (d) all documents produced by Missouri for inspection by defendants. The grounds for such objection are that the requests are duplicative, repetive, unduly burdensome, have been asked and answered, and are designed solely to harass, annoy and oppress plaintiff.

7. Plaintiff objects to these discovery requests to the extent that they seek information which has been or may be ascertained from documents that plaintiff has previously produced for inspection and copying by defendants or to the extent that they again seek the production of the same such documents, on the grounds that the requests are repetitive, unduly burdensome and

designed solely to harass, annoy and oppress plaintiff.

* * *

ANSWER TO INTERROGATORY NO. 12

Plaintiff asserts general objections 1 through 7. Without waiving any of said objections, plaintiff, at a convenient time and place, will again produce for defendants the documents from which relevant information requested by this interrogatory may be derived or ascertained, although defendants have already (apparently inadequately) reviewed such documents. Further, to the extent that plaintiff has not previously produced to defendants such documents from which relevant information requested by this interrogatory may be derived or ascertained, at an appropriate phase of this litigation plaintiff will afford

defendants an opportunity to inspect and copy such documents. The burden of deriving or ascertaining such information is substantially the same for defendants as for plaintiff.

* * *

ANSWER TO INTERROGATORY NO. 13

See response to Interrogatory No. 12 above.

* * *

ANSWER TO INTERROGATORY NO. 14

See response to Interrogatory No. 12 above.

* * *

ANSWER TO INTERROGATORY NO. 15

See response to Interrogatory No. 12 above.

* * *

REPLY APPENDIX 7

PLAINTIFF STATE OF NEBRASKA'S RESPONSES TO SETTLING DEFENDANTS'S JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

I.

PLAINTIFF'S GENERAL OBJECTIONS

* * *

6. Plaintiff objects to this interrogatory because the burden of ascertaining and compiling the information requested by this interrogatory would be substantially the same for the defendants as for the plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, plaintiff will produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford defendants a

reasonable opportunity to examine, audit, and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

7. Plaintiff objects to this interrogatory on the grounds that the information sought has previously been provided or made available to the defendants in previous discovery, to wit:

(A) Plaintiff's responses to defendants' joint first wave interrogatories (Set I), and Exhibit I attached thereto:

(B) Plaintiff's responses to defendants' joint first wave interrogatories re class action issues (Set2);

(C) The deposition of plaintiff's state purchasing offical, Joseph Arington, taken by defendants' counsel on September 15, 1978, in Lincoln, Nebraska;

(D) Plaintiff's production of documents for defendants, in response to the aforementioned discovery requests, [sic] certain purchasing records and documents from which the requested information has been or could have been derived or

ascertained, which documents have been provided to defendants' counsel Breed, Abbott and Morgan, 153 East 53rd Street, New York, New York between the dates of September 15 and September 18, 1978.

IV.

PLAINTIFF'S OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to defendants' instructions regarding the completion of forms * * * on the grounds that said forms: * * * (6) call for information which can be derived or ascertained from plaintiff's documents as easily by the defendants as by the plaintiff; and (7)

seek information which has previously been provided or been made available to the defendants.

V.

PLAINTIFF'S RESPONSES TO INTERROGATORIES

* * *

RESPONSE TO INTERROGATORY NO. 12

(Form 1): Plaintiff objects to this interrogatory on the grounds set forth in its General Objections at paragraphs 1, 2, 3, 4, 5, 6 and 7. Without waiving said objections, plaintiff states that the information requested by this interrogatory was made available and/or actually provided to defendants, through their attorneys Breed, Abbott and Morgan, on or about September 15-18, 1978 by way of document production completed at that

time and/or the deposition of Nebraska purchasing offical Joseph Arington.

With respect to information regarding purchases of fine paper by the State of Nebraska between the years 1971-1973, which information was made available previously to defendants on Septemer 15, 1978, but not copied at that time because the information was stored on microfilm, plaintiff will produce, pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, at a mutually agreeable time and place, and upon reasonable notice, documents from which the requested information can be derived or ascertained, and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof. * * *

RESPONSE TO INTERROGATORY NO. 13

(Form 2): See plaintiff's Response to Interrogatory No. 12.

* * *

RESPONSE TO INTERROGATORY NO. 14

(Form 3): See plaintiff's Response to Interrogatory No. 12.

* * *

RESPONSE TO INTERROGATORY NO. 15

See plaintiff's Response to Interrogatory No. 12.

REPLY APPENDIX 8

PLAINTIFF STATE OF NEW MEXICO'S RESPONSE TO DEFENDANTS JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

INTERROGATORY NO. 12

* * *

OBJECTIONS

* * *

2. The burden of deriving or ascertaining the information requested by this interrogatory would be substantially the same for Defendants as for Plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce at a mutually agreeable time and place documents from which the requested information can be derived or ascertained, and will afford Defendants a reasonable opportunity to examine, audit

and inspect such documents and to make copies, complilations, abstracts or summaries thereof.

3. Plaintiff objects to this interrogatory on the grounds that the information sought has previously been provided or made available to Defendants in Plaintiff's Responses to Defendants Joint First Wave Interrogatories (Set I) and as a result of the deposition of Joe S. Salazar, purchasing analyst for the State of New Mexico, which deposition was taken on August 16, 1978, and the letter of September 8, 1978 from Donald B. Monnheimer to Joel G. Chefiz and Steven C. Neal of the law firm of Kirkland and Ellis, Chicago, Illinois.

INTERROGATORY NO. 13

* * *

OBJECTIONS

Same as all objections to Interrogatory No. 12.

INTERROGATORY NO. 14

* * *

OBJECTIONS

Same objections as to Interrogatory No. 12.

INTERROGATORY NO. 15

* * * *

OBJECTIONS

Same objections as to Interrogatory No. 12.

REPLY APPENDIX 9

PLAINTIFF STATE OF WASHINGTON'S RESPONSES TO DEFENDANTS'JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

GENERAL OBJECTIONS

* * *

6. Plaintiff objects to these discovery requests to the extent that they seek information previously provided by plaintiff in this litigation, including information provided in: (a) plaintiff's responses to Defendants' Joint First Wave Interrogatories (Set I) or the Supplemental Class Action Interrogatories served by defendants Potlatch and Boise Cascade; or (b) defendants' depositions of plaintiff's employees Margaret Nairn or Thomas L. Holmes. * * *

7. Plaintiff objects to these discovery requests to the extent that they seek information which may be deemed or ascertained from documents that plaintiff has previously produced for inspection and copying by defendants or to the extent that they seek the production of such documents, on the grounds that the requests are repetitive, unduly burdensome, and designed solely to harrass, annoy and oppress plaintiff.

OBJECTIONS TO INSTRUCTIONS

Plaintiff objects to the instructions regarding the completion of forms 1 through 6 on the grounds that said forms: * * *

(6) call for information which can be derived or ascertained as easily by defendants as by plaintiff, from documents previously produced to defendant,;

(7) otherwise seek information which has previously been provided or made available to defendants.

REPONSES TO INTERROGATORIES

* * *

INTERROGATORY NO. 12:

* * *

RESPONSE:

Plaintiff asserts General Objections 1 through 7. Without waiving any of said objections, to the extent that plaintiff has not previously produced to defendants the documents from which relevant information requested by this interrogatory may be drived or ascertained, at an appropriate phase of this litigation, plaintiff will afford defendants and opportunity to inspect and copy such documents. The burden of deriving or ascertaining such information is substan-

tially the same for defendants as for plaintiff.

INTERROGATORY NO. 13:

* * *

RESPONSE:

See Response to Interrogatory 12 above.

INTERROGATORY NO. 14:

* * *

RESPONSE:

See Reponse to Interrogatory No. 12 above.

INTERROGATORY NO. 15:

* * *

RESPONSE:

Plaintiff asserts General Objections 1 through 7.

REPLY APPENDIX 10

CERTAIN STATES' [1] SUPPLEMENTAL RESPONSE TO DEFENDANTS' JOINT INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET II)

* * *

RESPONSES

* * *

RESPONSE NO. 12:

In addition to the information provided in previous answers and in the documents incorporated in this supplemental response, and the documents and testimony of purchasing agents previously taken or made available to defendants, the Respondent states respond as follows:

1/ Alaska, Arkansa, California, Colorado, Iowa, Missouri, Montana, Nebraska, New Mexico, Oregon, Washington. The States of Arizona and Pennsylvania have previously submitted supplemental responses.

(a) The burden of deriving or ascertaining the remaining information requested by this interrogatory would be substantially the same for defendants as for plaintiff. Purusuant to Rule 33(c), Federal Rules of Civil Procedure, each Respondent State will produce at a mutually agreeable time and place, the documents from which the requested information can be derived or ascertained, and will afford defendants full opportunity to examine, audit and inspect those documents and to make copies, compilations, abstracts or summaries of them.

RESPONSE NO. 13:

See Response No. 12.

RESPONSE NO. 14:

See Response No. 12.

RESPONSE NO. 15:

See Response No. 12.

APPENDIX 11

DEFENDANTS' JOINT FIRST WAVE INTERROGATORIES (SET I)

* * * *

INTERROGATORY NO. 3:

(a) With respect to each of your purchase transactions * * * involving fine paper, state the date of such transaction, identify the seller, describe the type of business * * * in which the seller was engaged and as to each such transaction:

* * *

(ii) state the product type (e.g., xerographic paper, off-set, coated or uncoated bond), grade and end use;

(iii) state the quantity in tons or pounds and the number of rolls or sheets;

(iv) state the points of shipment and delivery;

(v) state whether the purchase was made pursuant to a contract, and if so, identify the contract, describe its terms, including (without limitation) its length, and state whether the contract was fully performed according to its terms;

(vi) state whether any ancillary service or discount (as defined in "Definition F" above) was offered to you in connection with the sale, and if so, the type of the ancillary service or discount and, if a separate price was quoted for such service, the price quoted (if no separate price was quoted, so state);

(vii) state whether any ancillary service or discount was

accepted, and if so, the type of ancillary service or discount accepted and the amount paid therefore, if any;

(viii) if the purchase was from a person other than the manufacturer of the product, identify the manufacturer of the product;

(ix) identify all correspondence memoranda, and other documents pertaining to said transaction.

(b) Identify each purchase transaction referred to in Interrogatory No. 3(a) with respect to which you (or any purported class member known to you) claim damages.

* * *

INTERROGATORY NO. 4:

* * *

(b) Identify each non-defendant manufacturer from whom you have purchased

fine paper

(i) directly;

(ii) indirectly.

(c) Identify each person other than a manufacturer from whom you have purchased fine paper.

* * *

(f) State, for each calendar or fiscal year and for the period from the end of the last such year to the present, the percentage of the total quantity of fine paper purchased by you which was purchased:

(i) directly from the defendants named in this suit;

(ii) from merchants owned by defendants;

(iii) from merchants not owned by defendants;

(iv) from all other sources.

Identify the sources of information upon which this answer is based. * * *

Interrogatory No. 5:

(a) Describe in detail the types of documents, files and contracts in your possession which pertain to the purchase by you, or by any purported class member known to you, of fine paper.

(b) Identify all documents in your possession, custody or control (or in the possession, custody or control of any purported class member known to you) which contain the name of any of the defendants or which refer directly or by implication to any of the defendants.

REPLY APPENDIX 12

PLAINTIFF STATE OF OREGON'S ANSWERS AND OBJECTIONS TO DEFENDANTS' JOINT FIRST WAVE INTERROGATORIES (SET I)

* * * *

ANSWERS/OBJECTIONS TO INTERROGATORY NO. 3:

***

3(a)(ii)-3(b): Although such information is not readily available to Plaintiff State of Oregon in summary form, it can be derived or ascertained from an examination, audit or inspection of the business records and documents maintained by the Purchasing Division of the Oregon Department of General Services, or from a compilation, abstract or summary based thereon. The burden of deriving or ascertaining such information, however, would be substantially the same for defendants as for

plaintiff. Pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, Plaintiff will therefore produce such documents at mutually agreeable times and places and will afford defendants a reasonable opportunity to examine, audit and inspect such documents and to make copies, compilations, abstracts or summaries thereof.

* * *

OBJECTION/ANSWER TO INTERROGATORY NO. 4:

* * *

4(b): * * *

The documents from which such information can be derived or ascertained will be produced for the reasons and in the manner set forth in Plaintiff State of Oregon's answer herein to Interrogatory Nos. 3(a)(ii) - 3(b).

4(c): The documents from which

such information can be derived or ascertained will be produced for the reason and in the manner set forth in Plaintiff State of Oregon's answer to Interrogatory Nos. 3(a)(ii) - 3(b).

* * *

4(f): * * *

The documents from which such information can be derived or ascertained will be produced for the reasons and in the manner set forth in Plaintiff State of Oregon's answer herein to Interrogatory Nos. 3(a)(ii) - 3(b).

* * *

OBJECTION/ANSWER TO INTERROGATORY NO. 5:

* * *

5(a): Virtually all of the fine paper products purchased by Plaintiff State of Oregon and its various agencies and institutions are purchased through

the Purchasing Division of the Department of General Services in accordance with the Public Bidding and Purchasing Provisions of Chapter 279 of the Oregon Revised Statutes specified in Plaintiff State of Oregon's answer herein to Interrogatory No. 2(a)(i).

In connection with such purchases, the Purchasing Division of the Department of General Services maintains the following documents in its files and records:

1. Invitations to bid (including bid specifications, if any).

2. Bids received in response to invitations.

3. Contracts or price agreements resulting from bids.

4. Modifications or amendments to contracts or price agreements.

5. Contract release orders (requisitions), sent to Purchasing Division by the purchasing agencies or institutions.

6. Correspondence regarding the above.

Invoices for such purchases are maintained in the files and records of the agencies or institutions involved.

In addition to the purchases through the Purchasing Division of the Department of General Services, the various agencies and institutions are authorized to purchase up to $500 worth of fine paper products directly from various sellers. In connection with such purchases, the various agencies and institutions maintained the following documents in their files and records:

1. Purchase Order (a copy of which is sent to the Purchasing Division of the Department of General Services).

2. Invoices.

3. Correspondence regarding the above.

From time to time, purchases of fine paper products are not covered by the fine paper contract or price agreement currently in effect with the Department of General Services are necessary. In connection with such purchases, the Purchasing Division of the Department of General Services maintains the following documents in its files and records:

1. Purchase Requests (sent to Purchasing Division by the agency or institution requesting the purchase).

2. Invitations to bid (including bid specifications, if any).

3. Bids received in response to invitation.

4. Purchase Orders.

5. Correspondence regarding the above.

Invoices for such purchases are maintained in the files and records of the agency or institution involved.

* * *